

The Legal Eagle

THE SURVIVOR BENEFIT PLAN

INTRODUCTION: As a service to our legal assistance clients, we prepared this handout with frequently asked questions on the Survivor Benefit Plan. It is, of course, very general in nature since no handout can anticipate and answer all your specific questions. We ask, however, that you read over these questions and answers carefully in connection with your visit to our legal assistance attorneys so that you may have the fullest information available to help you with your family law problem.

1. Q. WHAT IS THE SURVIVOR BENEFIT PLAN, AND HOW DOES IT WORK?

A. The Survivor Benefit Plan (SBP) is an annuity paid to the surviving spouse or family member of a deceased servicemember. It's similar to insurance in that it enables retired military personnel to provide monthly income to beneficiaries after the retiree's death. The beneficiary of your SBP can be your spouse, former spouse, dependent children, or any other person with an insurable interest in your life.

2. Q. HOW DO YOU DECIDE HOW MUCH YOUR BENEFICIARY WILL RECEIVE?

A. To determine how much the beneficiary will receive, you must designate a "base amount," and this is based on your retired pay. The minimum base is \$300 per month, but you can select any greater amount, in \$100 increments, up to the full monthly amount of your retired pay.

The annuity for your spouse or former spouse is 55% of the base amount. It decreases to 30% of the base amount when your beneficiary reaches age 62, unless you were eligible to retire on or before October 2, 1985, in which case there is a complex set of rules which establishes the annuity amount. Your cost will depend on who your beneficiary is and what base amount you select.

3. Q. DO I HAVE TO SIGN UP? OR DO I HAVE A CHOICE?

A. SBP participation is optional, but if you are on active duty and married, you will not be able to reject SBP coverage without your spouse's consent. Reservists may elect out of the SBP program without the spouse's consent but, once enrolled, they must elect the maximum coverage unless the spouse consents to a lesser amount.

4. Q. WHEN DO I HAVE TO DECIDE?

A. There are three points to remember:

- If you are married and on active duty, you must make your SBP election before you retire. If you elect to participate, you cannot cancel the SBP coverage later, except under very limited circumstances.
- If you are a Reservist, you have two chances to select SBP coverage -- first when you complete 20 years of service and again when you turn 60. However if you elect to participate at the 20-year point, you cannot disenroll at age 60.
- You are only allowed one SBP plan. If you remarry, your second spouse cannot be named as your beneficiary, if your previously designated, former spouse is still eligible to receive your SBP.

5. Q. IS THIS *REALLY* A GOOD DEAL?

A. SBP is generally a good plan, but there are some situations in which it may not be the most economical plan. For example, the minimum SBP plan premium for \$300 per month as the base amount is cheaper than almost every private insurance program. But at larger amounts, SBP coverage may be more expensive than many commercial insurance plans. Also you may not want to designate a former spouse as a beneficiary if he or she is likely to remarry. Commercial life insurance or a private annuity may also provide better protection for a younger surviving spouse. The bottom line here is, "Shop around!"

6. Q. I'M GOING THROUGH A DIVORCE FROM MY HUSBAND. IS THERE ANYTHING I SHOULD KNOW ABOUT HIS SBP COVERAGE FOR ME?

A. Yes. Here are the most important points:

- First of all, it's not automatic. You must ask for it, and the two of you must agree on this coverage (or the judge must order it) for SBP to be effective.
- Second, it must be included in a court order and sent to DFAS (Defense Finance and Accounting Service) if you want to be sure that this option will be honored. And the order must be sent to DFAS within one year of the divorce.
- Finally, if retirement is approaching soon, see an SBP counselor or a legal assistance attorney now, so you can make an informed decision.

7. Q. WON'T THIS BE TAKEN CARE OF WHEN MY DIVORCE GOES THROUGH?

A. Not necessarily. If your divorce is in an overseas court (Germany, Japan, etc.) then the court cannot do anything about military retirement benefits, including retired pay and Survivor Benefit Plan. DFAS will not honor an order from an overseas court regarding SBP. You'll have to ask a court in the U.S. to make provisions for SBP if you want to be covered.

On the other hand, you may be proceeding with a divorce in an American court. In this case, you should ask your civilian attorney to be sure to include a request for property division in the divorce papers you file with the court. Your papers should specifically ask for division of any military pension rights and coverage under the Survivor Benefit Plan in case your husband dies. If DFAS is served within a year of divorce with a court order from a U.S. court specifying that SBP coverage is required, then it will honor the request, even if your husband refuses to sign an application to that effect.

8. Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?

A. See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options, and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters. Bring with you to the interview a copy of any documents or court papers that might be helpful to your attorney.

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